
By: **Senator Hollinger**

Introduced and read first time: January 31, 2003

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums and Homeowners' Associations - Rights of Owners and**
3 **Purchasers - Unenforceable Provisions in Documents**

4 FOR the purpose of declaring a certain provision in a declaration, bylaws, or
5 condominium plat or contract of sale void and not enforceable if the provision
6 requires the unit owner to give prior approval to certain future changes in
7 certain development plans, waive a future right to request a public hearing in
8 certain situations, or convey to certain persons a power of attorney in certain
9 future situations; declaring a certain provision in a recorded covenant,
10 restriction, declaration, or contract of sale void and not enforceable if the
11 provision requires the purchaser to give prior approval to certain future changes
12 in certain development plans, waive a future right to request a public hearing in
13 certain situations, or convey to certain persons a power of attorney in certain
14 future situations; and generally relating to provisions in certain documents
15 concerning condominiums and homeowner associations.

16 BY repealing and reenacting, with amendments,
17 Article - Real Property
18 Section 11-124
19 Annotated Code of Maryland
20 (1996 Replacement Volume and 2002 Supplement)

21 BY adding to
22 Article - Real Property
23 Section 11B-109.1
24 Annotated Code of Maryland
25 (1996 Replacement Volume and 2002 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
27 MARYLAND, That the Laws of Maryland read as follows:

1

Article - Real Property

2 11-124.

3 (a) Neither the rule of law known as the Rule Against Perpetuities nor the
4 rule of law known as the Rule Restricting Unreasonable Restraints on Alienation may
5 be applied to defeat or invalidate any provision of this title or of any declaration,
6 bylaws, or other instrument made pursuant to the provisions of this title.

7 (b) The provisions of any declaration, bylaws, and condominium plat filed
8 pursuant to this title shall be liberally construed to facilitate the creation and
9 operation of the condominium. So long as the declaration, bylaws, and condominium
10 plat substantially conform with the requirements of this title, a variance from the
11 requirements does not affect the condominium status of the property in question nor
12 the title of any unit owner to his unit, his votes, and his percentage interests in the
13 common elements and in common expenses and common profits.

14 (c) The declaration, bylaws, and condominium plat shall be construed
15 together and shall be deemed to incorporate one another to the extent that any
16 requirement of this title as to the content of one shall be deemed satisfied if the
17 deficiency can be cured by reference to any of the others. Any provision required by
18 this title may be amended only in accordance with the requirements for amendment
19 applicable to the instrument in which, absent this subsection, it is required to be
20 contained.

21 (d) All provisions of the declaration, bylaws, and condominium plat are
22 severable and the invalidity of one provision does not affect the validity of any other
23 provision.

24 (e) If there is any conflict among the provisions of this title, the declaration,
25 condominium plat, bylaws, or rules adopted pursuant to § 11-111 of this title, the
26 provisions of each shall control in the succession listed hereinbefore commencing with
27 "title".

28 (f) The execution of any instrument by a mortgagee for the purpose of
29 consenting to the legal operation and effect of a declaration, bylaws, and
30 condominium plat does not, unless the contrary is expressly stated, affect the priority
31 of the mortgage or deed of trust. The execution and recordation of a release of a unit
32 in a condominium by a mortgagee which refers to the condominium constitutes
33 consent by that mortgagee to the legal operation and effect of the recorded
34 declaration, bylaws, and condominium plat of that condominium.

35 (G) A PROVISION OF A DECLARATION, BYLAWS, OR CONDOMINIUM PLAT FILED
36 PURSUANT TO THIS TITLE OR A CONTRACT OF SALE FOR A UNIT IS VOID AND NOT
37 ENFORCEABLE IF THE PROVISION REQUIRES THE UNIT OWNER TO:

38 (1) GIVE PRIOR APPROVAL TO FUTURE MODIFICATIONS, CHANGES, OR
39 AMENDMENTS IN:

40 (I) THE USE OF THE COMMON ELEMENTS;

- 1 (II) THE FINAL DEVELOPMENT PLAN;
2 (III) THE PARTIAL DEVELOPMENT PLAN;
3 (IV) ZONING CHANGES OR VARIANCE REQUESTS; OR
4 (V) OTHER GOVERNMENTAL DEVELOPMENT OR BUILDING
5 APPROVAL FOR THE DEVELOPMENT OF THE CONDOMINIUM AND ITS COMMON
6 ELEMENTS;

7 (2) GRANT PRIOR CONSENT TO WAIVING THE REQUIREMENT OF A
8 PUBLIC HEARING FOR FUTURE MODIFICATIONS DESCRIBED IN ITEM (1) OF THIS
9 SUBSECTION IF A PUBLIC HEARING MAY BE REQUESTED BY LAW; OR

10 (3) CONVEY TO THE DEVELOPER, SELLER, OR VENDOR A POWER OF
11 ATTORNEY FOR FUTURE MODIFICATIONS DESCRIBED IN ITEM (1) OF THIS SECTION.

12 11B-109.1.

13 A PROVISION OF A RECORDED COVENANT, RESTRICTION, OR DECLARATION
14 FILED IN ACCORDANCE WITH THIS TITLE OR A CONTRACT OF SALE FOR A LOT IS
15 VOID AND NOT ENFORCEABLE IF IT REQUIRES THE PURCHASER TO:

16 (1) GIVE PRIOR APPROVAL TO FUTURE MODIFICATIONS, CHANGES, OR
17 AMENDMENTS IN:

- 18 (I) THE USE OF THE COMMON ELEMENTS;
19 (II) THE FINAL DEVELOPMENT PLAN;
20 (III) THE PARTIAL DEVELOPMENT PLAN;
21 (IV) ZONING CHANGES OR VARIANCE REQUESTS; OR
22 (V) OTHER GOVERNMENTAL DEVELOPMENT OR BUILDING
23 APPROVAL FOR THE DEVELOPMENT;

24 (2) GRANT PRIOR CONSENT TO WAIVING THE REQUIREMENT OF A
25 PUBLIC HEARING FOR FUTURE MODIFICATIONS DESCRIBED IN ITEM (1) OF THIS
26 SECTION IF A PUBLIC HEARING MAY BE REQUESTED BY LAW; OR

27 (3) CONVEY TO THE DEVELOPER, VENDOR, OR DECLARANT A POWER OF
28 ATTORNEY FOR FUTURE MODIFICATIONS DESCRIBED IN ITEM (1) OF THIS SECTION.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2003.